SITRAC CORPORATION SDN BHD

v.

LIM SIEW ENG

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[CIVIL SUIT NO: R1-12-163-2000]
12 JUNE 2002

CIVIL PROCEDURE: *Striking out - Dismissal of striking out application - Whether appealable - Whether ruling to dismiss was a "decision" that could be appealed from - Whether ruling made in the course of a trial or hearing of any cause or matter - Whether parties' rights disposed of - Courts of Judicature Act 1964, ss. 3, 27, 28*

This was an appeal by the appellant/defendant against the dismissal of its striking out application against the respondent/plaintiff by the sessions judge. The plaintiff raised a preliminary objection, *ie*, that the ruling to dismiss the striking-out application was not appealable as it was not a "decision" within s. 3 of the Courts of Judicature Act 1964 ('CJA'). The reason being that it did not finally dispose of the rights of the parties and therefore fell within the exclusionary clause in the said definition, *ie*, that it was a ruling made in the course of a trial or hearing of any cause or matter which did not finally dispose of the rights of the parties.

Held:

[1] Even if the dismissal of the striking-out application did not finally dispose of the rights of the parties, the question that must be considered was whether it was a ruling made in the course of a trial or hearing of any cause or matter. If it was not a ruling made in the course of a trial or hearing of any cause or matter, it was a "decision" within s. 3 of the Courts of Judicature Act 1964 and was therefore appealable. The dismissal of the appellant's striking-out application was clearly not a ruling made in the course of a trial or hearing of any cause or matter as the trial had not commenced. Neither was it a ruling made in the course of the hearing of the striking-out application because the decision to dismiss the application was made after and not in the course of the hearing of the application. A ruling made in the course of the hearing of an application must be a ruling on some point other than the ultimate question whether the application is to be allowed or dismissed. (p 466 d-h)

[2] The right to appeal from a particular decision can only be denied by clear words. Whether a decision is a ruling that is excluded in the definition of "decision" in s. 3 of the CJA is a question of statutory interpretation of the exclusionary clause therein. The actual words in the said definition have to be considered. (p 467 a-f)

[Preliminary objection dismissed.]

Case(s) referred to:
Dato' Seri Anwar Ibrahim v. PP [1999] 1 CLJ 537 ***(refd)***
Kee Yeh Maritime Co Ltd v. Coastal Shipping Sdn Bhd [2001] 5 CLJ 194 ***(refd)***
Ratnam v. Cumarasamy & Anor [1962] 28 MLJ 330 ***(dist)***
Seabance Ge Capital Sdn Bhd lwn. Dynabuilders Sdn Bhd [2002] 5 MLJ 152 ***(refd)***
Teoh Poh Keong Sdn Bhd v. Shinhan Engineering & Construction Co Ltd [2001] 2 CLJ 440 ***(not foll)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 27, 28
Subordinate Courts Act 1955, s. 4(b)
Subordinate Courts Rules 1980, O. 14 r. 21, O. 49 rr. 1, 2(2)

For the appellant/defendant - T Raj; M/s Nazri Aziz & Wong
For the respondent/plaintiff - Seah Ban Kiat; M/s Iza Ng Yeo & Kit

Reported by Usha Thiagarajah

JUDGMENT

Abdul Aziz Mohamad J:

The appellants, who are the defendants in the action in the Sessions Court, failed in their bid in the Sessions Court to have the summons and the statement of claim in the action struck out under O. 14 r. 21 of the Subordinate Courts Rules 1980. The Sessions Court dismissed the striking out application with costs. The appellants now appeal. The respondent, who is the plaintiff in the action, has raised a preliminary objection in the appeal, the issue being whether the decision to dismiss the appellants' striking out application is appealable. The respondent maintains that, according to the Courts of Judicature Act 1964, it is not and therefore the appeal should be dismissed *in limine*.

The jurisdiction of the High Court to hear appeals in civil matters from subordinate courts is conferred by s. 27 of the Courts of Judicature Act 1964, which provides as follows:

> The appellate civil jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts as hereinafter provided.

Among the matters "hereinafter provided" are those in s. 28, which concerns the scope of the appellate civil jurisdiction and provides as follows:

> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.
>
> (2) An appeal shall lie from any decision of a subordinate court in any proceedings relating to maintenance of wives or children, irrespective of the amount involved.

In those two subsections the word "decision" appears, which was defined originally in s. 3 as including "judgment, sentence or order". It being an including definition, the ordinary meaning of "decision", which is a wide one, was not affected by the inclusion. In 1998, however, the definition was changed so as to exclude from the original definition "any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties". The intended effect of the change on s. 28 is obviously to make it read as though, in any event, no appeal shall lie to the High Court from such a ruling of a subordinate court.

Section 4(b) of the Subordinate Courts Rules Act 1955 empowers the Subordinate Courts Rules Committee to make rules for, *inter alia*, "regulating and prescribing the procedure in proceedings by way of appeal from a Subordinate Court to the High Court". The rules are in O. 49 of the Subordinate Courts Rules 1980, where, in r. 1, "decision" is defined as including '"judgment", "order" and "decree"'. Like the original definition in the Courts of Judicature Act 1964, it is a wide definition. A provision, besides others, in O. 49 where the word appears and the definition therefore comes into play is, for example, r. 2(2), which provides as follows:

> An appellant may appeal from the whole or any part of a decision and the notice of appeal shall state whether the whole or part only, and what part of the decision is complained of.

Since, however, the power to make rules conferred by s. 4(b) of the Subordinate Courts Rules Act 1955 is confined to making rules of procedure, and the rules in O. 49 are therefore rules of procedure, the wide nature of the definition of "decision" in r. 1 cannot affect the operation of the definition of the word in the Courts of Judicature Act 1964, which definition goes to the substantive matter of the scope of the High Court's appellate jurisdiction. Therefore, notwithstanding the broad definition of "decision" in O. 49 r. 1, no appeal shall lie to the High Court from a subordinate court in respect of "any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties".

In contending that the dismissal of the striking out application is not appealable, learned counsel for the respondent focuses on the words "does not finally dispose of the rights of the parties". His submission comes down to this, that the rights of the parties will finally be disposed of only when the respondent's claim in the action is either dismissed or allowed, and that since the dismissal of the appellants' striking out application leaves intact the respondent's claim as yet to be finally adjudicated, the dismissal of the striking-out application did not finally dispose of the rights of the parties and was therefore not a "decision" and is not appealable.

That may be right as far as the words "does not finally dispose of the rights of the parties" are concerned, but they are not the only words that need to be considered. The words "ruling made in the course of a trial or hearing of any cause or matter" must not be overlooked. For a ruling to be not a "decision", it is not enough that it does not finally dispose of the rights of the parties. The ruling must also be one made in the course of a trial or hearing of any cause or matter. Even if the dismissal of the striking out application did not finally dispose of the rights of the parties, the question must be considered whether it was a ruling made in the course of a trial or hearing of any cause or matter. If it was not, it is not excluded by the definition of "decision" and is therefore appealable. That question has not been addressed by the respondent's counsel.

A clear example of a ruling made in the course of a trial of a cause or matter is a ruling on a question arising in the course of the trial – which ruling is, as it must necessarily be, made in the course of the trial – whether a particular document is admissible in evidence. A clear example of a ruling made in the course of a hearing of a cause or matter is where, in the course of the hearing of, say, an originating summons, a ruling is made, on a question arising in the course of the hearing, whether an affidavit ought to be disallowed.

The dismissal in this case of the appellants' striking out application was clearly not, in my opinion, a ruling made in the course of a trial or hearing of any cause or matter, and is therefore appealable. It is out of the question that it was made in the course of the trial of the respondent's action. The trial had not even commenced. Neither was it a ruling made in the course of the hearing of the striking out application, because the decision to dismiss the application was made after, not in the course of, the hearing of the application. Moreover a ruling made in the course of the hearing of an application must be a ruling on some point other than the ultimate question whether the application is to be allowed or dismissed.

In my opinion the right to appeal from a particular decision can only be denied by clear words.

I need to remark on one or two of the cases that have been cited.

In *Dato' Seri Anwar Ibrahim v. PP* [1999] 1 CLJ 537, which was an appeal from a refusal of bail, there are indications at pp. 554 and 555 that the Court of Appeal did take into account the words "ruling made in the course of a trial or hearing of any cause or matter", but the court considered that the refusal of bail was such a ruling and that the ruling did not finally dispose of the rights of the appellant.

My opinion that the dismissal of the appellants' striking out application is appealable is at odds with the decisions of Richard Malanjum J in *Kee Yeh Maritime Co Ltd v. Coastal Shipping Sdn Bhd* [2001] 5 CLJ 194 and *Teoh Poh Keong Sdn Bhd v. Shinhan Engineering & Construction Co Ltd* [2001] 2 CLJ 440. That is necessarily so because Richard Malanjum J, it would seem, was not, or did not feel, called upon to consider the words "ruling made in the course of a trial or hearing of any cause or matter".

Whether a decision is a ruling that is excluded by the excluding clause in the definition of "decision" in s. 3 of the Courts of Judicature Act 1964 is a question of statutory interpretation of that clause. In my opinion it is, I say with respect, an incorrect approach to the interpretation of that clause to begin, as it seems to me was done by Richard Malanjum J and the respondent's counsel in his written submission, by asking the question whether the decision is a final order or an interlocutory order, and I say so because the term "final order" or "interlocutory order" is not used in the excluding clause. It is the actual words used in the excluding clause that have to be considered. The position here is different from that in *Ratnam v. Cumarasamy & Anor* [1962] 28 MLJ 330, where, because those terms appeared in s. 3(1) of the appeals from the Supreme Court Ordinance 1958, which was the statutory provision in question, the Court of Appeal had to embark upon a consideration of the question when an order is final and when it is interlocutory. In the two cases decided by Richard Malanjum J and in the written submission of the respondent's counsel in this case, the preoccupation with the inquiry into the meaning of "final order" and "interlocutory order" – terms not used in the excluding clause – and the impact of the result of the enquiry, namely, that a final order is one that finally disposes of the rights of the parties, and an interlocutory order is one that does not, which impact brings into prominence the second part of the excluding clause, might have eclipsed the words of the first part and the value of those words.

Those words were also not considered in *Seabance Ge Capital Sdn Bhd lwn. Dynabuilders Sdn Bhd* [2002] 5 MLJ 152 because they were not a point taken up in argument.

I dismiss the preliminary objection.